

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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FREDERICK BANKS,

Plaintiff,

v.

CYNTHIA REED EDDY, *et al.*,

Defendants.

Case No. 2:16-cv-01152-APG-NJK

**ORDER ON REPORT AND
RECOMMENDATION**

(ECF No. 9)

On December 2, 2016, Magistrate Judge Koppe entered an order denying plaintiff Frederick Banks' application to proceed in forma pauperis because he did not include a signed and completed financial certificate and a properly certified account statement. ECF No. 9. Judge Koppe also recommended that I dismiss the complaint without prejudice for failure to adequately allege facts showing venue lies in the District of Nevada. *Id.* Banks objects, arguing that because he is an American Indian, the court should construe any ambiguous provisions in his favor. ECF No. 10. Banks contends that it is unclear what a "financial certificate" means or what "proper certification" of a trust fund statement requires. Banks also argues that he adequately alleged facts supporting venue because he alleges the wireless signals originated in or passed through Nevada.

I conducted a de novo review of the issues set forth in the report and recommendation. 28 U.S.C. § 636(b)(1). As to the application to proceed in forma pauperis, Banks previously completed a financial certificate, which was certified by a prison official, and thus he has demonstrated he understood and could comply with those requirements. *See* ECF No. 4 at 4. He does not explain why he did not do so in relation to his latest application. Banks has had several opportunities to properly complete an application to proceed in forma pauperis. I nevertheless will give him one final chance to do so in this case.

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1 As to venue, the proposed second amended complaint alleges that the purported
2 surveillance “originated in many places including Las Vegas because it was sent via satellite on a
3 wireless signal.” ECF No. 8-1 at 1. Banks’ proposed second amended complaint is not clear
4 about whether he means to allege the signal originated in Nevada or merely passed through
5 Nevada. The mere passing of a wireless signal through Nevada does not establish venue here.
6 However, I will grant Banks leave to amend to allege where the purported wireless signal
7 originated before it was sent to the satellite. If Banks contends the signal originated elsewhere
8 and merely passed through Nevada, then I advise him that venue does not lie in this District.

9 IT IS THEREFORE ORDERED that Judge Koppe’s report and recommendation (ECF
10 No. 9) is accepted and modified to grant leave to file a properly completed application to proceed
11 in forma pauperis and to grant leave to amend to allege facts supporting venue in this District.

12 IT IS FURTHER ORDERED that the Clerk of the Court shall send Banks a blank
13 application form for pro se litigants who are incarcerated.

14 IT IS FURTHER ORDERED that on or before March 10, 2017, Banks shall file a
15 renewed application to proceed in forma pauperis, accompanied by a signed, completed financial
16 certificate and a certified statement from his inmate trust account for the previous six months. **He**
17 **may not rely upon, incorporate, or cite to previously filed certificates and statements.**
18 Alternatively, Banks shall make the necessary arrangements to pay the \$400 filing fee.

19 IT IS FURTHER ORDERED that on or before March 10, 2017, Banks shall file an
20 amended complaint correcting the identified deficiency if he can do so. If Banks chooses to
21 amend the complaint, I inform him that the court cannot refer to a prior pleading to make an
22 amended complaint complete. This is because, as a general rule, an amended complaint
23 supersedes the original complaint. Local Rule 15-1 requires that an Amended Complaint be
24 complete in itself without reference to any prior pleading. Once a plaintiff files an amended
25 complaint, prior versions of the complaint no longer serve any function in the case. Therefore, in
26 an amended complaint, each claim and the involvement of each defendant must be sufficiently
27 alleged.
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1 IT IS FURTHER ORDERED that failure to comply with this order will result in the
2 dismissal of this case without prejudice.

3 DATED this 1st day of February, 2017.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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